STATE OF MICHIGAN

COURT OF APPEALS

JANICE M. BEUSCHEL TRUST, by GAIL SCHOENBORN, Acting Trustee, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED November 25, 2014
v	No. 316618 Kent Circuit Court
PATRICIA L. BEUSCHEL, Defendant/Counterplaintiff-Appellee.	LC No. 11-008775-CH

Before: BOONSTRA, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

In this deed contest, plaintiff challenges a document that by its plain and unambiguous language conveyed a joint tenancy with full rights of survivorship to defendant. Upon the death of the grantors, defendant became the sole owner of the property by operation of law. Recognizing the validity of this clearly worded deed, the trial court granted a directed verdict in defendant's favor. As plaintiff presented no evidence to render the deed invalid, we affirm.

I. BACKGROUND

At issue in this appeal is an apple farm that has been in the Beuschel family for generations. Most recently, the property belonged to Wilton Beuschel and his wife Janice. Wilton and Janice had three children: John, Gary, and plaintiff Gail Schoenborn. Of the three Beuschel children, John alone worked the farm with his father and took over operations when Wilton cut back his hours and eventually retired. John and his wife, defendant Patricia Beuschel, expanded the farm by purchasing neighboring properties in their own names and equipment and enlarging the farm's commercial operations. In 1990, John entered a lease agreement with his parents so he could operate the farm on his own terms and supply retirement funds for Wilton and Janice. In 1995, Wilton and Janice deeded fee title to five acres of the farm to John and defendant. John used that five-acre parcel as the operation center for the unified farm consisting of the original Beuschel property, along with John and defendant's neighboring parcels.

On September 30, 1997, Wilton and Janice executed a quit claim deed transferring the property to themselves and John, "all as joint tenants with full rights of survivorship." The deed provided that it was "given for the purpose of avoiding probate" and was "not intended as a gift."

The deed also recited that John gave one dollar as consideration for the deed. This deed was recorded. No one disputes that Wilton and Janice intended John to inherit the property to the exclusion of his siblings: Gary and plaintiff. And after the 1997 transfer, John incorporated the farm as "John Beuschel Farms, Inc."

For the next nine years, John and defendant operated the farm and provided financially for Wilton and Janice. On September 28, 2006, John was killed in an automobile accident. The parties disagree regarding the reasons, but it is uncontested that on November 10, 2006, Wilton and Janice executed a new quit claim deed, transferring the property to themselves and defendant, "all as joint tenants with full rights of survivorship." The deed recited that Wilton and Janice granted the property interest "for no consideration." It further provided, "This deed is not intended to be a gift but rather to avoid probate." This deed was also recorded.

In the winter of 2006-2007, defendant paid for Wilton and Janice to spend several months in Florida. Defendant and John had paid for similar trips for several years. While Wilton and Janice were in Florida, defendant made arrangements to transfer the farm business. Defendant auctioned off the farming equipment and entered lease agreements with other farmers to work the land. Defendant's actions allegedly affected Wilton deeply. His health declined and he died of a cardiac arrest in Tennessee on April 4, 2007, while he and Janice were travelling back to Michigan.

Following Wilton's death, Janice had a change of heart regarding her estate plan. Despite that she and defendant remained joint tenants with rights of survivorship, on May 7, 2009, Janice executed and recorded a new quit claim deed transferring the property to the Janice M. Beuschel Trust No. 1.[1] Janice attached an affidavit to the 2009 deed acknowledging the 2006 transfer to include defendant as a joint tenant. Janice averred that the 2006 transfer was intended "for estate planning purposes only, for convenience; not to convey the real property in fee or as a gift, but to avoid the probate process. I did not give up any right, title or interest in the Real Property." Janice's affidavit continued, "I retained full power and authority in the real property to sell, convey, . . . or otherwise manage or dispose of the property . . . ." Janice's trust named her and plaintiff as trustees and provided for the equal division of her property to her surviving children upon her death.[2]

Janice died in April 2011. Plaintiff thereafter filed the present case seeking to invalidate the November 2006 deed and to quiet title in the property with the trust. Defendant filed a counterclaim to quiet title based on her right as a joint tenant with full rights of survivorship. The circuit court conducted a bench trial on May 1, 2013. At the outset of the trial, the court noted that it found Janice's 2009 attempt to transfer the property to her trust "insignificant" "as a matter of law" because Janice could only transfer the interest she possessed—that of a joint

[1] This transfer affected only the portion of the farm that had originally belonged to Wilton and Janice. Neither the adjoining parcels that belonged to John and defendant, or the five acres transferred outright to John and defendant, are at issue in this case.

[2] Gary predeceased Janice, leaving plaintiff as Janice's sole heir under the trust.

tenant with rights of survivorship. The only issue for trial therefore was whether the November 10, 2006 deed including defendant as a joint tenant was valid. The court limited the evidence to that issue.

Plaintiff proceeded to testify regarding Janice's understanding of the property interests created in the deed including defendant as a joint tenant. Plaintiff testified that Janice told her in the spring of 2007, "[W]e thought we were signing some papers so that [defendant] could pay the pickers [i.e. migrant farm workers], so they didn't leave." Plaintiff repeated that Janice expressed that she and Wilton "did not understand they were signing a deed and giving the property to [defendant] to do what she wanted with it." At that time, plaintiff did not know that the "papers" referred to a deed. Plaintiff claimed she only learned of the 2006 deed years later. After Wilton's death, Janice told plaintiff that she wanted the property to pass to plaintiff and her brother Gary and for "the grandchildren to be part of this land." Before her brother John's death, however, plaintiff admitted that her parents intended John alone to inherit the farm. She claimed that there was a verbal understanding that John would give her and Gary a financial gift upon the death of her parents. Plaintiff also admitted that John financially provided for Wilton and Janice for several years. Plaintiff even conceded that defendant continued to care for Janice financially after John's death, just not "to the degree that John did." Plaintiff's two daughters also testified, but provided no relevant details beyond the parties' relationships and Wilton's sadness regarding the farm equipment auction.

At the close of plaintiff's proofs, defendant sought a directed verdict because there was no evidence that defendant coerced Wilton and Janice, or committed any fraud, to secure the 2006 deed. The trial court granted defendant's motion and entered a judgment quieting title in defendant's favor. The court agreed that "the real issue is . . . is there enough proofs here or any proofs at all, to show that there was some fraud involved here or that that deed was not valid." The court summarized plaintiff's evidence as showing her ignorance of the 2006 deed until 2011. The court continued, "It's not as if [the plaintiff's witnesses] testified and said, yeah, my dad saw me on the 11th day of November on [sic] 2006, and he told me that they just had me sign a document that only . . . allowed the pickers to be paid." Rather, plaintiff's witnesses admitted there was no contemporaneous discussion. The court acknowledged plaintiff's witnesses' testimony that Wilton and Janice wanted the farm to remain in the family. However, defendant was a part of the family. And ultimately, there was "absolutely no testimony whatsoever that would establish that this deed was invalid."

Plaintiff now appeals.

II. ANALYSIS

We review de novo a trial court's decision to grant a directed verdict. In doing so, we "must consider the evidence in the light most favorable to the nonmoving party." *Zsigo v Hurley Med Ctr*, 475 Mich 215, 220-221; 716 NW2d 220 (2006). "A directed verdict is appropriately granted only when no factual questions exist on which reasonable jurors [or reasonable trial judges sitting as the trier of fact] could differ. If reasonable jurors could reach conclusions different than this Court, then this Court's judgment should not be substituted for the judgment of the jury." *Cacevic v Simplimatic Engineering Co*, 248 Mich App 670, 679-680; 645 NW2d 287 (2001). We also review de novo a trial court's resolution of an equitable action, such as a

suit to quiet title. *In re Rudell Estate*, 286 Mich App 391, 402; 780 NW2d 884 (2009). "A deed is a contract, and the proper interpretation of the language in a deed is therefore reviewed de novo on appeal." *Id.* at 402-403 (citations omitted).

"[T]he plain language of a deed is the best evidence of the parties' intent." *Id.* at 409. Important to the resolution of this case is that Wilton, Janice, and defendant were joint tenants with full rights of survivorship. "The principal characteristic of the joint tenancy is the right of survivorship. Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate." *Albro v Allen*, 434 Mich 271, 274-275; 454 NW2d 85 (1990). Usually, one joint tenant can destroy the joint tenancy by transferring his or her interest to a third party. The third party and the remaining original joint tenant then become tenants in common without a right of survivorship. *Id.* at 275. When the deed creating the joint tenancy includes "express words of survivorship," however, the parties have "a joint life estate with dual contingent remainders." *Id.* The right of survivorship is "indestructible" in this situation. *Id.* at 276. This Court has described such a transfer as a "poor man's will" and warned that such a "device carries some risk as the grantor relinquishes his ability to later change his mind." *Shubert v Schellie*, 143 Mich App 125, 219; 371 NW2d 914 (1985). Accordingly, pursuant to the plain language of the 2006 deed, defendant became the sole owner of the property following the deaths of Wilton and Janice.

In this regard, the trial court correctly ruled that evidence of Janice's 2009 deed to her trust was completely irrelevant to the issue at hand. The most Janice could transfer to her trust was a life estate in the property. Upon her death, that life estate was extinguished and there was nothing more to transfer through her trust to her surviving children. See *id.* at 280. Rather, to avoid the effect of the 2006 deed, plaintiff had to prove the 2006 deed invalid.

Deeds transferring title to property are deemed valid if they are in writing, and "signed, sealed, and acknowledged by the grantor." MCL 565.47; MCL 565.152. Plaintiff contends that the 2006 deed is invalid because defendant secured it through undue influence or fraud. In support of this claim, plaintiff relies upon the lack of consideration in the deed and her parents' advanced age and mental state when the deed was executed.

> To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. However, in some transactions the law presumes undue influence. The presumption of undue influence is brought to life upon the introduction of evidence which would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary or an interest which he represents benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976) (citations omitted), overruled in part on other grounds *In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003).]

Plaintiff presented absolutely no evidence that defendant threatened or used "physical or moral coercion" or undue flattery against Wilton or Janice in any way. Plaintiff implies that defendant may have misrepresented the nature of the deed to Wilton and Janice as they later told plaintiff that they merely signed papers to allow defendant to pay the farm's employees. Plaintiff's own testimony contradicted this implication, however. Plaintiff admitted that Wilton and Janice intended that John alone would inherit the property. And plaintiff admitted into evidence both the 1997 deed making John a joint tenant on the property and the 2006 deed conveying the same interest to defendant. The substance of those documents is identical, except for the recitation of one dollar in consideration of the 1997 conveyance. Plaintiff's own evidence thereby refuted her claim that Wilton and Janice were unaware of the effect and meaning of the 2006 deed.

Plaintiff further argues that her parents were incompetent at the time of the transfer given their advanced age and poor health, in addition to the recent and tragic death of their son John. In connection with this claim, plaintiff testified regarding Wilton's reaction when defendant sold the farm equipment at auction. Plaintiff asserted that Wilton "was very hurt" because "he was never asked his opinion." However, plaintiff admitted that she was not privy to the contents of the communications between her parents and defendant leading up to the November 10, 2006 deed. She further conceded that she had no documentary proof of her parents' "confusion" at that point in time. Plaintiff even admitted that the farm equipment belonged to John's corporation, not her parents, and that defendant as the surviving owner of the corporation had the right to sell the equipment at the auction separate and distinct from the 2006 deed.

Plaintiff also suggests that defendant fraudulently convinced Wilton and Janice to sign the 2006 deed. Fraud can be used to rebut the presumption that a deed conveying property is valid. See *Mallery v Van Hoeven*, 332 Mich 561; 52 NW2d 341 (1952); *Dieterle v Pearll*, 312 Mich 134; 20 NW2d 133 (1945).

> To establish a prima facie case of fraud, a plaintiff must prove that (1) the defendant made a material representation, (2) the representation was false, (3) the defendant knew that it was false when it was made, or made it recklessly, without any knowledge of its truth and as a positive assertion, (4) the defendant made the representation with the intention that the plaintiff would act on it, (5) the plaintiff acted in reliance on it, and (6) the plaintiff suffered injury because of that reliance. This Court has frequently reiterated that, to sustain a fraud claim, the party claiming fraud must reasonably rely on the material misrepresentation. [*Zaremba Equipment, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 38-39; 761 NW2d 151 (2008) (citations omitted).]

Again, the only misrepresentation suggested by plaintiff's testimony is that defendant falsely told Wilton and Janice that their signatures were required on the 2006 deed so that defendant could pay the farm's employees. Even if defendant made this misrepresentation and intended Wilton and Janice to rely upon it, that reliance would not be reasonable, negating any fraud claim. As noted, Wilton and Janice had used identical language in the 1997 deed and all parties agree that Wilton and Janice intended that deed to transfer title free and clear to John upon their death. It would be unreasonable for Wilton and Janice to sign an identical document and not understand its impact.

Plaintiff finally argues that the 2006 deed left Wilton and Janice financially destitute. Generally, "[c]ourts will not inquire into the adequacy of consideration." *Harris v Chain Store Realty Bond & Mortgage Corp*, 329 Mich 136, 145; 45 NW2d 5 (1950). Indeed a landowner has every right to transfer his or her property for no consideration. However, plaintiff points to several cases holding invalid deeds issued from elderly or infirm grantors to relative and nonrelative grantees when that transfer left the grantor without a means of support. See *Low v Low*, 314 Mich 370; 22 NW2d 748 (1946); *Beattie v Bower*, 290 Mich 517; 287 NW 900 (1939); *Platt v Platzki*, 277 Mich 700; 270 NW 192 (1936); *Power v Palmer*, 214 Mich 551; 183 NW 199 (1921); *Lewandowski v Nadolny*, 214 Mich 350; 183 NW 85 (1921).

The trial court likely would have had stronger grounds to rule upon the financial effect of the 2006 deed, had it waited until the trial's conclusion to rule. As a result of the directed verdict, defendant's documents regarding the financial support she and John provided for Wilton and Janice over the years, and more particularly that defendant provided after John's death, were not admitted into evidence. However, plaintiff as the appellant has provided defendant's proposed evidence to this Court. This list of monetary transfers to Wilton and/or Janice reveals that defendant gave her in-laws $10,000 on December 5, 2006, $23,000 in 2007, $12,000 in 2008, $12,000 in 2009, and $8,000 in 2010. Defendant thereafter paid $2,682 for Janice's medical expenses, and $5,816.82 for Janice's funeral expenses. In addition to the sums detailed in the list of transactions, defendant also paid $2,000 each year to heat Janice's Michigan home, $800 annually on Janice's homeowner's insurance policy, and $5,000 on property taxes for the real estate underlying the joint tenancy. Had the trial court considered this information, it would be hard pressed to conclude that Janice was left financially destitute by the joint tenancy. Accordingly, we decline to remand for further proceedings on this ground.

We affirm.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher